



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**OHN BEN SHEPPERD
ATTORNEY GENERAL**

March 5, 1956

Honorable Walter L. Bell
Executive Director
State Board of Control
Austin, Texas

Letter Opinion No. MS-254

Re: Sale by the Board of
Control of surplus pro-
perty belonging to the
Board for Texas State
Hospitals and Special
Schools.

Dear Mr. Bell:

You have requested an opinion on the authority of the State Board of Control to sell surplus personal property of the eleemosynary institutions under the management and control of the Board for Texas State Hospitals and Special Schools. Your specific questions are:

"1. Is it the duty of the Board of Control to sell surplus personal property for those agencies expressly enumerated in Article 666? (As exceptions).

"2. May the Board of Control sell surplus personal property for those agencies expressly enumerated as exceptions in Article 666?

"3. If surplus personal property is sold under question (2) above, is the revenue derived from such a sale reappropriated pursuant to H.B. 140, 54 Legislature, Regular Session, Article III, Section 8?"

You have informed us that the surplus property involved in your request includes chairs, benches, tables, beds, mattresses, springs, etc., in the custody of eleemosynary institutions under the control of the Board for Texas State Hospitals and Special Schools specifically excepted by the provisions of Article 666 of Vernon's Civil Statutes, which provides:

"All personal property belonging to the State, regardless of where it is located, under the control of any State Agency, with the exception of State Eleemosynary Institutions,

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Colleges, Institutions of Higher Learning and the Texas Prison System, when it has become unfit for use, or be no longer needed, shall be placed under the jurisdiction of the State Board of Control, and the State Board of Control may sell such property . . ."

Prior to 1943, the State Board of Control and its predecessor, the Superintendent of Public Buildings and Grounds, were required to sell all surplus property belonging to the State situated in the City of Austin. Article 6387, Revised Civil Statutes of Texas, 1911; Article 666, Revised Civil Statutes of Texas, 1925. In 1943, the Legislature amended Article 666, Chapter 171, Acts of the 48th Legislature, 1943, page 272. This amendment made several changes in the sale of surplus property. The only change pertinent to your request was concerning the property subject to being sold by the State Board of Control. While Article 666 had authorized "all property belonging to the State situated in the City of Austin" to be sold by the State Board of Control when such property became unfit for use or was no longer needed, the 1943 Act authorized "all property belonging to the State, regardless of where it is located, except property under the control of "state eleemosynary institutions" (other exceptions not applicable) to be sold when such property became unfit for use or no longer needed.

In 1947, the Legislature again amended Article 666 so as to change the phrase "all property belonging to the State" to all personal property belonging to the State. Chapter 289, Acts of the 50th Legislature, 1947, Regular Session, page 492. Other changes contained in this Act are not pertinent. Article 666 was amended by Chapter 447, Acts of the 51st Legislature, 1949, Regular Session, page 827, but the amendments are not pertinent to your questions.

In 1949, the Legislature transferred the management and control of certain eleemosynary institutions from the State Board of Control to the Board for Texas State Hospitals and Special Schools. Article 3174b, V.C.S. Section 9 of Article 3174b transferred all personal property used for the administration of such institutions to the newly created Board. Section 2 provided that the Board of Control "shall continue to handle purchases for such institutions in the same manner as they do for other State agencies". No reference to the sale of surplus property, however, was made.

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In the General Appropriation Act of 1953, (H.B. 111, Acts of the 53rd Legislature, Regular Session, 1953, ch. 81, p. 127) the Legislature provided:

"Sec. 14. Surplus Property. Any surplus farm, garden or dairy products, including livestock, may be sold to other institutions, to the central warehouse, or on the open market on a competitive bid basis and any properties may be transferred between agencies under the same governing boards are also authorized to sell surplus property under the same procedure as outlined in Article 666, Revised Civil Statutes as amended. Receipts from both types of such sales shall be deposited to the credit of the selling institution's other operating expense appropriation and are appropriated to the institution's use."

This provision was omitted in the current appropriation Act. The Legislature did, however, make a similar provision applicable "only to the Special Schools of the Youth Development Council, and to the Waco State Home". Section 26 of Article II of House Bill 140, Acts of the 54th Legislature, Regular Session, 1955, Chapter 519, pages 1348, 1398. Thus, while the Legislature has authorized surplus personal property of institutions under the control of the Youth Development Council and the Waco State Home, to be sold by the State Board of Control, it has deleted such authorization from the riders applicable to institutions under the control of the Hospital Board, an authorization previously granted by the 53rd Legislature.

In view of the legislative history of sale of surplus personal property of eleemosynary institutions now under the control of the Hospital Board, the Legislature has evidenced a clear intention to deny authorization to the State Board of Control to sell such property.

Therefore, you are advised that it is not the duty of the State Board of Control to sell surplus personal property

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of eleemosynary institutions under the control of the Board for Texas State Hospitals and Special Schools nor is the State Board of Control authorized to do so.

Yours very truly,

APPROVED:

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